

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO ENTERO, .
ET AL, .
PLAINTIFFS, .
vs. . DOCKET NO. 5:21-CV-844-XR
GREGORY W. ABBOTT, ET AL, .
DEFENDANTS. .

TRANSCRIPT OF MOTION TO COMPEL PROCEEDINGS
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
JULY 11, 2023

APPEARANCES:
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REPORTED BY:

GIGI SIMCOX, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
SAN ANTONIO, TEXAS

1 THE COURT: So that extension is granted.

2 So I was intending that all the -- that what we just
3 discussed on that document number was going to just go
4 forward. If all of you can agree amongst yourselves about
5 extending anything in the scheduling order, that's approved.
6 If it's opposed, then bring it to my attention.

7 MISS HOLMES: Understood. Thank you, Your Honor.

8 MR. PARRENO: Your Honor, if the Court will indulge
9 one more matter.

10 Your Honor, we want to make sure to alert the Court
11 that the relief in the plaintiffs' instant motion doesn't
12 resolve the entire dispute created by the Jonathan White
13 declaration. As alluded to by the Department of Justice,
14 there are broader sword and shield issues at issue here.

15 THE COURT: So let's stop there. So maybe I'm wrong,
16 I thought there was going to be an agreement to redepose
17 Mr. White. No? Yes?

18 MR. KERCHER: No, not that I'm aware of, Your Honor.
19 No.

20 THE COURT: Is the DOJ or any plaintiff seeking to
21 redepose Mr. White?

22 MR. KERCHER: I think at this point the parties
23 have -- we had a first meet and confer on this yesterday and
24 we agreed to continue talking. We're going to try to drill
25 down to find specific points of disagreement and then we'll

1 have discussions about various ways that there might be,
2 assuming there is a sort of deficit of information, various
3 ways there might be to fill that.

4 Right now we are trying to figure out whether we even
5 agree that there is a -- deficit is not the right word, but a
6 deficit of information as a result of this.

7 THE COURT: This isn't a ruling, but just to tip my
8 hand, I thought you -- not you personally. I don't know who
9 was representing the State. I thought there was an
10 overassertion of privilege being made because the one question
11 at least that's quoted from the DOJ was an innocuous sort of
12 broad general question about generally how does the operations
13 work, and I thought that was, the instruction not to answer
14 was inappropriate.

15 MR. KERCHER: I take your point, which is why I think
16 the parties are going to drill down and see if they can figure
17 out whether or not there may be information that was not and
18 that can be supplemented and figure out precisely what those
19 points of disagreement and what appropriate remedies might be.

20 THE COURT: The appropriate remedy may be redepose
21 him, maybe under a limited number of questions to be asked,
22 but that's what I would highly suggest.

23 MR. KERCHER: Thank you, Your Honor.

24 THE COURT: Anything else?

25 MR. PARRENO: I'm sorry. That meet and confer

1 process that Mr. Kercher alluded to involves not just the
2 redeposition and reopening the deposition, maybe other
3 discovery matters, and we are, private plaintiffs along with
4 the United States, are going through that meet and confer
5 process with the State to discuss those broader concerns and
6 it may become necessary to file an additional motion for
7 further discovery to remedy the selective waiver by the State
8 here.

9 And as you-all know, the Department of Justice is
10 here to speak on that if the Court wants to hear anything
11 additional about this issue.

12 THE COURT: So I really don't like -- well, I can
13 talk generally, but I'm certainly not going to make any
14 rulings on discovery motions that are not before me yet.

15 Does DOJ want to say anything else?

16 MISS PAIKOWSKY: No, Your Honor.

17 We would just echo a lot of what has been said.
18 We're in the process of meeting and conferring with the
19 parties to nail down the scope of the issue. We do think that
20 there was a selective disclosure. We think that the bulleted
21 disclosure was likely improper and prejudicial and we're
22 hoping to come to a solution without further motions practice,
23 but in the event we're not able to we might come back seeking
24 from this Court perhaps in the form of a motion in limine to
25 exclude or --

1 THE COURT: You're heading to where I was heading.
2 So, again, this is not any rulings. This is just
3 off-the-cuff comments. I mean, if you, the State, doesn't
4 make some accommodations here on, like I have already said I
5 think you were overly aggressive, if there's not some
6 accommodations made here, you're ultimately going to be
7 leading me down the road where I'm going to have to strike or
8 limit portions of this testimony that you-all might need in,
9 so this is not going down a favorable path.

10 And then all that -- now, from the plaintiffs'
11 perspective is going to have yet another issue for a possible
12 appeal, so you-all need to sit and hash this out.

13 MR. KERCHER: It's not our intention to play a shield
14 game with the privilege, Your Honor. We are confident we can
15 come to some agreement. There may be some small portion that
16 gets left over but I'm sure we can find something.

17 THE COURT: And, you know, we're talking already a
18 trial date in September, and it's like, it's late July. So we
19 have a lot of work to do.

20 MR. KERCHER: Agreed.

21 THE COURT: Anything else?

22 MR. PARRENO: No, Your Honor. Thank you.

23 THE COURT: Anything else?

24 MR. KERCHER: No, Your Honor. May we be excused?

25 THE COURT: Anything else from the DOJ?

1 MISS PAIKOWSKY: Nothing, Your Honor. Thanks very
2 much.

3 THE COURT: With that, we're adjourned.

4 Thank you.

5 *(Concludes proceedings)*

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7 I certify that the foregoing is a correct transcript from
8 the record of proceedings in the above-entitled matter. I
9 further certify that the transcript fees and format comply
10 with those prescribed by the Court and the Judicial Conference
11 of the United States.

12
13 Date: 07/13/23

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